

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVE NAGY,  
Plaintiff,

v.

GROUP LONG TERM DISABILITY PLAN  
FOR EMPLOYEES OF ORACLE  
AMERICA, INC., et al.,  
Defendants.

Case No. 14-cv-00038-HSG

**ORDER REGARDING SELECTION OF  
AN INDEPENDENT EXPERT**

In this action, Dave Nagy seeks long term disability benefits due to the symptoms of Chronic Fatigue Syndrome (“CFS”), which he claims renders him totally disabled under the ERISA plan administered by the Defendants. Determining whether a claimant is disabled due to the symptoms of CFS is a task that has vexed many courts. This is because “[t]here is no blood test or other objective laboratory test for chronic fatigue syndrome.” *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 676 (9th Cir. 2011). Instead, “[t]he standard diagnosis technique for [CFS] includes testing, comparing symptoms to a detailed Centers for Disease Control list of symptoms, excluding other possible disorders, and reviewing thoroughly the patient’s medical history.” *Id.* While there is no dispute that Nagy has been diagnosed with CFS, the administrative record in this case contains little to no expert opinion on whether the severity of Nagy’s CFS-related symptoms render him unable to work.

Accordingly, pursuant to the authority recognized by the Ninth Circuit in *Muniz v. Amec Construction Management, Inc.*, 623 F.3d 1290, 1294 (9th Cir. 2010), the Court finds that the retention of an independent expert to evaluate Nagy’s functional capacity is warranted. The parties are directed to meet and confer regarding the potential experts and file a stipulation agreeing to an expert by no later than **21 days** from the date of this order. If no agreement can be

reached, the parties must each file a brief of no more than five pages by the same deadline. Briefs must propose an expert for the court to consider, disclose why the parties could not agree on a single expert, and explain why the party's proposed expert should be selected.

**IT IS SO ORDERED.**

Dated: 9/14/2015

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge

United States District Court  
Northern District of California